

IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "E", MUMBAI

BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND  
SHRI SANJAY GARG, JUDICIAL MEMBER

ITA No.584/M/2015  
Assessment Year: 2008-09

M/s. SDB Estate Private Limited, 101, Sai Pooja, 1 <sup>st</sup> Floor, Plot No.390,16 <sup>th</sup> Road, Near Rajni Maternity Home, Bandra (West) Mumbai – 400 052 <b>PAN: AAJCS 0694J</b>	Vs.	ITO-5(3)(2) CIT (A) 10 Mumbai
(Appellant)		(Respondent)

Assessee by : Shri Jitendra Jain, A.R.  
Revenue by : Shri Neil Philip, D.R.

Date of Hearing : 25.03.2015  
Date of Pronouncement : 15.04.2015

**ORDER**

**Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 26.11.2014 of the Commissioner of Income Tax (Appeals) [(hereinafter referred to as CIT(A)] relevant to assessment year 2008-09. The assessee through its grounds of appeal has agitated the addition of Rs.4,25,00,000/- made under section 68 of the Income Tax Act (hereinafter referred to as the Act).

2. The brief facts of the case as brought out in the order of the Ld. CIT(A) are that the DDIT (Investigation) Unit-1(4) had passed out an information, which was gathered during the search action in the case of M/s. Mahasagar

Securities P. Ltd. and its related concerns, to the Assessing Officer (hereinafter referred to as the AO) having jurisdiction over the assessee, that the assessee company had taken the entry of share application money in crores from the various companies floated by Shri Mukesh Chokshi. It was reported that the director of the said concern had admitted about introducing unaccounted income as share application, while receiving unaccounted money either in cash or by way of transfer of funds. Hence, notice under section 148 of the Act was issued to the assessee to reassess the escaped income. The assessee was asked to give name of the allottee companies & their addresses, name of the banks and cheque numbers and amount received as share application money. From the submission of the assessee it was observed by the AO that the share applicants were the same name of which appeared in the list of 42 companies of Mahasagar Securities P. Ltd. of Shri Mukesh Chokshi, a chartered accountant by profession, who had floated these companies from the office of Sadashiv CHS, Santacruz (E) and none of the companies was doing genuine business. Hence, share application money amounting to Rs.4,25,00,000/- allegedly shown as received from such hawala companies was held as unexplained cash credits under section 68 of the Act and added to the total income. Being aggrieved by the order of the AO, the assessee preferred appeal before the CIT(A).

3. By the impugned order, the Ld. CIT(A) not only upheld the reopening of the assessment under section 147 of the Act but also confirmed the additions made by the AO under section 68 of the Act holding that the findings of the AO that the share application money received by the assessee through the various companies controlled by Shri Mukesh Chokshi group could not be held as genuine transactions. Aggrieved by the order of the Ld. CIT(A), the assessee has come in appeal before us.

4. We have heard the rival contentions of the Ld. Representatives of both the parties and have also gone through the records. So far the issue relating to the reopening of the assessment proceedings is concerned, the Ld. A.R. of the assessee has been fair enough to admit that the issue was squarely covered against the assessee by the decision of the co-ordinate bench of the Tribunal in the case of “Smt. Jyoti D. Shah” ITA No.1843/M/2012 decided on 18.12.14 wherein the Tribunal, in almost identical facts, while adjudicating the issue of reopening on the basis of statement of Shri Mukesh Chokshi and further on the basis of details obtained during the search by the investigation wing, has held that under the circumstances the AO was having sufficient reason to believe that there was an escapement of income and accordingly he was justified in reopening the assessment under section 147 of the Act. The relevant findings of the Tribunal relating to the issue of reopening in the case of “Smt. Jyoti D. Shah” (supra) for the sake of convenience are reproduced as under:

“3. Rival contentions have been heard and record perused. There was a search undertaken in the case of M/s Mahasagar Securities P.Ltd. and its group companies including M/s.Gold Star Finvest P.Ltd. on 25.11.2009. A statement of Shri Mukesh Chokshi, Director of M/ s. Mahasagar Securities P.Ltd. was recorded during the search wherein Mukesh Chokshi had explained in detail the modus of operation of the accommodation entries racket being run by him by floating some 34 companies and admitted to be in business of providing the bogus accommodation entries. Further enquiries by the Investigation Wing also confirmed that many of the sub-broking companies floated by Shri Mukesh Chokshi actually did not carry out the transactions through the main' brokers for whom they were claiming to be sub-brokers and all the bills raised by them were illegal, unauthorized and against the provisions of the SCRA Act, 1956. On the basis of the details obtained during the search by the investigation wing, it was noted that the assessee also had made sales and purchases of shares of M/s Buniyad Chemicals Ltd through M/s. Gold Star Finvest P.Ltd which had provided the accommodation entries. M/s Buniyad Chemicals Ltd as well as M/ s. Gold Star Finvest P.Ltd were floated by Mukesh Chokshi only. Since it was admitted by Mukesh Chokshi that he was providing accommodation entries only through its various companies, accordingly a notice u/s. 148 was issued after recording the reasons.

4. As per the reasons recorded, we found that the AO was having sufficient reasons to believe that there was an escapement of income, accordingly, he was justified in reopening the assessment u/s.147 of the Act. Hence, the ground No.1 raised by the assessee is dismissed.”

5. In the case in hand, the reopening was made on the basis of information regarding receipt of accommodation entries of share capital provided by the group companies of Shri Mukesh Chokshi and further on the basis of statement of Shri Mukesh Chokshi. The facts being identical to that of the case of “Smt. Jyoti D. Shah” (supra) this issue is accordingly decided against the assessee.

6. So far as the confirmation of additions on merits is concerned, the Ld. A.R. of the assessee has submitted that the transactions in question were genuine transactions. The names, addresses etc. of all the allottees/share holders were duly disclosed. While inviting out attention to page 117 to 120 of the paper book, the Ld. A.R. has contended that the assessee company had allotted 2.07 crore equity shares of Rs.10/- each. Out of the 35 allottees, the Revenue has disputed the transactions relating to 13 parties only. He has further stated that the entire case of the department was based on the general statement of Shri Mukesh Chokshi. The name of the assessee did not appear in the statement of Shri Mukesh Chokshi. The identity, creditworthiness and genuineness of transactions were duly proved by the assessee. The assessee had duly furnished the copies of the various documents such as allotment letters, copies of application form for allotment of shares, confirmation letters from the respective shareholders, the copies of the resolution of the respective allottee companies, the balance sheet and Profit & Loss account of the allottee companies as well as the allotment letter issued etc. The payment was received by cheque and the PAN numbers of the allottees were also provided. He has drawn our attention in this respect to the paper book pages 2 to 113 which are the copies of the above stated details in relation to the allottees, the

genuineness of transactions relating to whom has been disputed by the Revenue. The Ld. A.R. of the assessee has further stated that said Shri Mukesh Chokshi was not related to the assessee in any manner. The shares were duly allotted to the Pvt. Ltd. Companies and that the assessee had duly discharged the burden of proving that the transactions in question were genuine. He has further relied upon the various decisions of the Tribunal to stress that under similar circumstances, wherein the additions were made on the basis of general statement of Shri Mukesh Chokshi, the same have been ultimately deleted by the appellate authorities/Tribunal observing that the statement of Shri Mukesh Chokshi was a general statement and could not be corroborated by any material evidence and therefore the additions can not be made solely on the general statement of Sh. Chokshi, especially in the light of the evidences, confirmations etc. provided by the assessee to prove the genuineness of the transactions in question. The Ld. A.R. has relied upon the following decisions in this respect:

1. Jafferli K. Rattoney vs. DCIT (2012) 53 SOT 220 (Mumbai)
2. Jyoti D. Shah vs. ITO, ITA No.1843/Mum/2012
3. Mukesh R Marolia vs. Addl. CIT (2006) 6 SOT 247 (Mum)
4. ITO vs. Radhika R. Toshniwal, ITA No.1331/Mum/2010
5. ACIT vs. RAVindra Toshniwal, ITA No.1356/Mum/2010
6. CIT vs. Creative World Telefilms Ltd. (2011) 333 ITR 100 (Bom)
7. ACIT vs. Gagandeep Infrastructure Pvt. Ltd., ITA No.5784/Mum/2011
8. Mukesh C. Dagli vs. ITO, ITA No.2260/Mum/2008, ITA No.2261/Mum/2009
9. Smt. Shashi K. Lahoti vs. ITO, ITA No.7637/Mum/2013
10. CIT vs. Oasis Hospitalities Pvt. Ltd. (2011) 333 ITR 119 (Delhi)
11. Orient Trading Co. Ltd. vs. CIT (1963) 49 ITR 723 (Bom.)
12. ITO vs. JJ Multitrade Pvt. Ltd., ITA No.2158 & 2159/Mum/2014
13. Shri Jatin P. Ajmera vs. ITO, ITA No.7859/M/2011
14. Smt. Ananya Singh vs. ACIT, ITA No.6493/M/2014

7. On the other hand, the Ld. D.R. has contended that there was no direct evidence that the transactions in question were not genuine, however, the surrounded circumstances were enough to show that the transactions in

question were not genuine. The alleged allottee companies were floated by Shri Mukesh Chokshi and the transactions in question were mere paper transactions.

8. We have considered the rival contentions of both the parties. We find that the assessee, in this case, had filed detailed evidence to prove the genuineness of transactions e.g. copies of form for allotment of shares, confirmation of shareholders and other documents as mentioned above. The department has relied upon the general statement of Shri Mukesh Chokshi. However, it has been contended by the assessee that in none of the statement recorded by the department of Shri Mukesh Chokshi, the name of the assessee appears. Further that all the money was received through account payee cheques which has not been disputed by the Revenue. In series of decisions as referred to above, wherein, the additions were made on the general statement of Shri Mukesh Chokshi, the Tribunal, after considering the facts and circumstances and the evidences produced by the assessee to prove the genuineness of the transactions, has deleted those additions. For the sake of completeness, we would like to reproduce the observations of the Tribunal in the case of “JJ Multitrade Pvt. Ltd.” (supra).

“3. The assessee is engaged in the business of financial services. It received share capital subscription of Rs. 10,00,000/- from M/s. Talent Infoway Ltd. & M/s. Buniyad Chemicals Ltd. in respect of A.Y 2007-08 and Rs.5,00,000/- from M/s. Alpha Chemie Trade Agencies Pvt. Ltd. in respect of assessment year 2008-09. The concerns from whom such share capital was received were floated by Mr. Mukesh C. Choksi, who alongwith all related concerns was searched by Investigation Wing. In the statement issued to DIT(Inv) by Mr. Mukesh Choksi and Mr. Jayesh Sampat, they admitted that companies have received cash from corporate entities by charging a commission of 0.15% to 1.25% and they have issued cheque in favour of the companies. On receiving such information the AO issued notices under section 148 to the assessee and added aforementioned amount in respective years under section 68 of the IT Act.

3.1 The main contention raised by the assessee to agitate aforementioned addition in an appeal filed before Ld. CIT(A) were as under:

- (i) The share application form is the confirmation of the share applicant. The share allotment in compliance of Companies Act 1956 in Form No.2 is factually evident of the share capital.
- (ii) Funds of the share capital subscription are through banking channel and reflected in the bank statement.
- (iii) The allotment of the shares are recorded in the minutes of the company which are kept in accordance with the applicable provisions of the Companies Act 1956.
- (iv) All share subscription of the company are duly incurred by corporate entities having Income tax Permanent Account Number and are filing returns of income and are duly assessed and thus, identity of the shareholders is also established.
- (v) Applicant's name is not mentioned in any of the statement of Mr. Mukesh C. Choksi Group recorded by the IT Department.

3.1 Thus, it was submitted that addition could not be made under section 68 of the Act. To substantiate above contentions following evidences were also referred.

- Memorandum and Article of Association.
- Copy of ROC Form No.2 (alongwith details of Share application and share Allotment)
- Copy of Audited Balance Sheet full set.
- Copy of the Confirmation letter.
- Copy of PAN Card and
- Copy of IT acknowledgement evidencing filing of return.
- Copy of Balance sheet.

3.2 Ld. CIT(A) after considering the submissions of the assessee has deleted the addition following the below mentioned decisions.

1. Bharti Syntex Ltd. vs. DCIT, ITA Nos. 172 & 173/Jp/2010
2. Creative World Telefilms Ltd. (2011) 333 ITR 100 (bom)
3. Lovely Exports, 6 DTR 308 (SC).

The Department is aggrieved, hence, has filed aforementioned appeal.

4. After narrating the facts Ld. DR pleaded that Ld. CIT(A) has wrongly deleted the addition and his order should be set aside and that of AO be restored.

5. On the other hand, it was submitted by Ld. AR that assessee has submitted the copies of various statements recorded by the Department of Mr. Mukesh C. Choksi, which are dated 25/11/2009, 11/12/2009, 3/2/2010, 14/05/2010 and 16/3/2012 and are submitted from pages 135 to 169 of the paper book and as per submissions made by the assessee before AO assessee's name was not appearing in any of the statement and such contention of the assessee has not been controverted by the Revenue till date. It was further submitted that bank account



of the assessee firm was also submitted to show that there was no cash withdrawals or deposit. Reference was made to page 22 to 25 of the paper book in which share application money has been deposited. The assessee has also furnished details of the shareholder companies at page 26 to 32 of the paper book and pages 65 to 71 of the paper book in respect of Talent Infoway Limited and M/s.Buniyad Chemicals Ltd., which include resolution, confirmation form, balance sheet copy, PAN Card and Memorandum of Association and Article of Association of shareholder companies and these submissions were made before AO vide letter dated 5/3/2013 and 7/3/2013, copies of which are placed at pages 205 to 209 and 210 and 213 of the paper book. It was further submitted that in similar type of cases ITAT Mumbai has been taking a consistent view that no addition was called for. Reliance was placed on following decisions:

- a) Orient Trading v/s. CIT (Bom) 49 ITR 723.
- b) Mukesh Marolia Case (53 SOT 220)
- c) CIT vs. Creative World Telefilms Ltd. (2011) 333 ITR 100 (Bom)
- d) ITO 14(3)1 v/s. Mrs. Radhika Ravindrakumar Toshniwal, ITA 1331/M/2010,
- e) Smt. Shashi K. Lahoti V/s. ITO 14(2)(3) (ITA No.7637/Mum/2013).
- f) Smt. Jyoti D.Shah v/s. ITO 21(1)(2) (ITA 1843/Mum/2012).

5.1 Copies of the decision in the case of ITO vs. Mrs. Radhika Ravindrakumar Toshniwal (supra), Smt. Jyoti D. Shah vs. ITO (supra), Smt. Shashi K. Lahoti vs ITO (supra) are also filed to substantiate that in similar cases addition has been deleted by the Tribunal.

5.1 Without prejudice it was submitted that tax effect in both the cases is lower than Rs.4.00 lacs and according to latest Circular issued by CBDT vide Instruction No.5/2014 [ F No. 279/MISC.142/2007-ITJ(PT)] dated 10/07/2014 and in view of the decision of Hon'ble Bombay High Court in the case of CIT vs. Smt. Vijaya Kavekar (2013 30 taxmann.com 412) the instruction will apply to earlier appeals also, therefore, the Departmental appeal should be dismissed.

6. We have heard both the parties and their contentions have carefully been considered. The assessee had filed evidence to support the receipt of share application money which was supported by copies of share application money, confirmation from shareholder and other documents. According to Department as per statement recorded of Mr. Mukesh C. Choksi, these transactions of the assessee are to be considered as bogus. However, it was the contention of the assessee that in none of the statement recorded by the Department the name of the assessee exist. Such contention of the assessee has not been found to be incorrect. To further support, the assessee has filed copy of its bank account to contend that there are no cash deposits or withdrawals. However, Department has not accepted all these evidences and made the addition. Ld. CIT(A) after appreciating the evidences submitted by the assessee and relying upon certain



decisions has come to the conclusion that such addition was not called for. On the basis of the similar statement other transactions entered into by other assesseees with the concerns of Mr. Mukesh C. Choksi were considered as bogus and this issue had come before the Tribunal and Tribunal after considering the facts has deleted those additions. For the sake of completeness relevant observations of the Tribunal from the said decisions are reproduced:

(i) ITO vs. Radhika Ravindrakumar Toshniwal (supra) – In the said case addition of Rs.26,73,536/- was made in respect of sale of shares of M/s. Talent Infobay Ltd. and the same was treated as bogus transaction. The Tribunal deleted the addition with the following observations:

*“4. At the outset it was submitted that the similar issue was agitated in assessment year 2005-06 in the husband’s case on the basis of which the learned CIT (A) also examined the issue and deleted the addition. In the order of the ITAT in ITA No.5302/Mum/2008 for assessment year 2005-06 in assessee’s husband’s case is as under:*

*“11. Having heard both the parties and having considered their rival contentions, we find that the AO has treated the said transactions as bogus transactions on the ground that-*

*a) The sale transactions were not on the floor of the ASEL but were off market transactions; b) The address of the M/s Buniyad Chemical Ltd. and M/s Talent Infoway Ltd. was the same and the contact person for M/s Buniyad Chemical Ltd. on the floor of ASEL was Shri Mukesh Chokshi. c) Mr. Mukesh Chokshi had stated that the sale proceeds have been paid to the assessee through the funds provided by the assessee. 12. As regards point (a) above, we find that the issue is covered by the decision of the Tribunal in the case of Mukesh R. Marolia wherein it has been held that off market transaction is not a unlawful activity and there is no relevance in seeking details of share transaction from stock exchange when the sale was not on stock exchange and relying upon it for making addition. 13. As regards points (b) & (c) above, we find that the assessee has filed relevant documentary evidence before the AO but the AO has failed to consider the same. The CIT[A] in his order has considered the said evidence and has come to the conclusion that the share transactions are genuine. However, as held by the Tribunal in the case of Rajinidevi A. Chowdhary [cited supra], which is on similar set of facts, the AO could have verified from the Registrar of companies as to whether the shares have been transferred and the names of the shareholders in whose names shares have been transferred. The decision of the Tribunal in the case of Rajinidevi A. Chowdhary has also been upheld by the jurisdictional High Court as taken note of by this Tribunal in the case of Shri Pinakin L. Shah [cited supra], to which one of us i.e. the Judicial Member, is a party. In these facts and circumstances of the case, we do not see any reason to interfere with the order of the CIT[A] and the same is upheld”.*

5. *Since the facts are similar to the earlier year and since assessee has furnished copy of the sale bills of the sale of Talent Infoway Ltd, and bank statements including purchase contract notes and other details on the basis of which CIT(A) held the transactions as genuine, we do not see any reason to interfere with the order of the CIT (A). Since AO also relied on the findings in the case of assessee's husband in assessment year 2005-06 and the learned CIT (A) also deleted the addition based on the same, we do not see any reason to interfere with the order of the CIT (A). Accordingly the Revenue grounds are dismissed.*

6. *In the result appeal filed by the Revenue is dismissed."*

(ii) In the case of Smt. Jyoti D. Shah vs. ITO an addition of Rs.13,13,256/- was made in respect of sale of shares of M/s. Buniyad Chemicals Ltd. as the same belong to concerns of Mr. Mukesh C. Choksi and the said addition was deleted by the Tribunal with the following observations.

*"6. The AO has not considered the supporting evidences during the course of assessment before concluding that the assessee too was actively involved as a beneficiary by paying cash to the Mukesh Choksi group. The learned Assessing Officer had merely relied on the fact that "the main person of the @ group, Shri Mukesh Choksi, had admitted that all the transactions carried out by his various companies were bogus and he only provides accommodation bills.*

*7. Learned AR also placed reliance in the case of Shri Anantrai B Shah vs. ITO 21(1)(1), Mumbai vide IT Appeal No. 1842 of 2012, order dated 14/12/2012, wherein it was held that Shri Mukesh Choksi has issued a general statement, however the statement was not provided by the assessee, therefore a general statement given by Mukesh Choksi cannot be applied to each and every case. The additions made were deleted as there was no direct evidence against the assessee. Neither the statement of Mukesh Choksi was provided to the assessee nor any opportunity for cross examination of Mukesh Choksi was provided. Further, reliance was placed in the case of Global Stock Broking {P} Ltd. vs. ACIT {2008} 4 DTR 172 {Mum} it was held that where oral evidence of any party is sought to be used against an assessee, it is necessary that information relating to such statement or the copy of deposition should be furnished to the assessee with opportunity to cross examine the deponent, if required by the assessee. If it is not done, it is violation of principle of natural justice. Hence order is bad in law.*

*8. Applying to the facts of instant case to the proposition laid down by the coordinate bench, as discussed above, we do not find any merit in the addition so made by treating the sale proceeds of shares as undisclosed income of the assessee. Accordingly, the AO is directed to delete the same.*

*9. In the result, appeal of the assessee is allowed in part, in terms indicated hereinabove."*

6.1 In view of the above position, we see no infirmity in the order passed by Ld. CIT(A) vide which impugned additions have been deleted."

(Emphasis supplied)

9. In view of the above stated legal position and in the light of reliable evidences brought on record by assessee to substantiate identity, genuineness and creditworthiness of shareholders, which have not been controverted by the Revenue, the additions made solely on the basis of general statement of Shri Mukesh Chokshi cannot be held to be justified and the same are accordingly ordered to be deleted.

10. In the result, the appeal of the assessee is partly allowed.

**Order pronounced in the open court on 15.04.2015.**

**Sd/-  
(R.C. Sharma)  
ACCOUNTANT MEMBER**

**Sd/-  
(Sanjay Garg)  
JUDICIAL MEMBER**

Mumbai, Dated: 15.04.2015.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.